

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DOMINIC GIBBS,

Petitioner,

v.

ORDER
03-CV-361

EDWARD DONNELLY, Superintendent,

Respondent.

This case was referred to Magistrate Judge Victor E. Bianchini, pursuant to 28 U.S.C. § 636(b)(1). Petitioner filed a petition for a writ of habeas corpus. On September 30, 2009, Magistrate Judge Bianchini filed a Report and Recommendation, recommending that the petition be dismissed.

Petitioner filed objections to the Report and Recommendation on October 16, 2009 and respondent filed a response on November 2, 2009.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions, the Court adopts the proposed findings of the Report and Recommendation.

As part of its adoption of the Report and Recommendation, the Court hereby issues a certificate of appealability pursuant to 28 U.S.C. § 2253(c)(2) for

the reasons stated in the Report and Recommendation. The certificate of appealability is limited to whether the trial court's denial of a jury instruction on self-defense or justification amounted to a violation of petitioner's federal constitutional rights. To assist petitioner with an appeal on this issue, the Court hereby appoints the Federal Public Defender for the Western District of New York pursuant to 18 U.S.C. § 3006.

Accordingly, for the reasons set forth in Magistrate Judge Bianchini's Report and Recommendation, petitioner's petition for a writ of habeas corpus is dismissed.

The Clerk of Court shall take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: December 7, 2009